

**PUBLIC UTILITIES**  
**BOARD OF PUBLIC UTILITIES**

**Nuclear Plant Decommissioning Cost  
and Trust Fund Review**

**Proposed Readoption with Amendments: N.J.A.C. 14:5A**

Authorized By: Board of Public Utilities, Jeanne M. Fox,  
President, and Frederick F. Butler, Carol J.  
Murphy, Connie O. Hughes and Jack Alter,  
Commissioners.

Authority: N.J.S.A. 48:2-13 and 48:2-21.

Calendar Reference: See Summary below for explanation of  
exception to calendar requirement.

BPU Docket Number: EX 02050293

Proposal Number: PRN 2002 - 444

Submit comments by February 15, 2003 to:

New Jersey Board of Public Utilities  
Kristi Izzo, Secretary  
ATTN: BPU Docket Number: EX 02050293  
Two Gateway Center  
Newark, New Jersey 07102

The agency proposal follows:

**Summary**

The Board of Public Utilities (Board) is proposing to readopt its rules regarding the costs of decommissioning nuclear generating stations, found at N.J.A.C. 14:5A. The rules provide procedures to ensure that there will be adequate funds for the proper decommissioning of nuclear power plants owned by New Jersey utilities at the cessation of operation of the facilities. Specifically, the rules require the filing of periodic update reports regarding trust funds held by the utilities to cover decommissioning costs. The rules set forth the required contents of the reports, procedures for public notice and

comment on the reports, and procedures for Board review of the reports.

At present, there are only two nuclear generating stations that are subject to N.J.A.C. 14:5A. They are the Three Mile Island 2 (TMI 2) plant, in which Jersey Central Power & Light Company (JCP&L) has a 25 percent ownership interest; and the Saxton Nuclear Experimental facility, a small demonstration reactor located in Pennsylvania, in which JCP&L has a 44 percent ownership interest. All other similar interests previously held by Board-regulated utilities have been transferred to out-of-State owners under Board orders that addressed, among other things, the decommissioning costs associated with those facilities. However, N.J.A.C. 14:5A continues to be necessary because of the remaining interests held by JCP&L in the TMI 2 and Saxton facilities, and because it is possible that other New Jersey utilities will obtain interests in nuclear facilities in the future.

The substantive provisions of the rules proposed for readoption by the Board are summarized as follows:

- ▶ N.J.A.C. 14:5A-1.1 sets forth the purpose and scope of the chapter.
- ▶ N.J.A.C. 14:5A-1.2 provides definitions for key words and terms used in the chapter.
- ▶ N.J.A.C. 14:5A-2.1 sets forth the requirement that New Jersey electric utilities with an ownership interest in a nuclear plant file a Decommissioning Cost Update with the Board. In addition, the section sets forth details regarding the timing and format of the filing.
- ▶ N.J.A.C. 14:5A-2.2 sets forth the elements that must be included in the Decommissioning Cost Update.
- ▶ N.J.A.C. 14:5A-2.3 allows affected electric utilities to jointly file certain information in order to avoid the filing of duplicative information.
- ▶ N.J.A.C. 14:5A-3.1 requires public notice of the filing of a Decommissioning Cost Update.
- ▶ N.J.A.C. 14:5A-3.2 provides for a public comment period on the Update, and for formal Board review in certain cases.
- ▶ N.J.A.C. 14:5A-3.3 provide for party status for DEP and the Ratepayer Advocate, and for a motion for intervention by others.
- ▶ N.J.A.C. 14:5A-3.4 provides for discovery in any formal proceeding initiated under this chapter.
- ▶ N.J.A.C. 14:5A-3.5 provides for a public hearing as part of a formal proceeding, and evidentiary hearings as determined necessary by the Board.
- ▶ N.J.A.C. 14:5A-3.6 requires findings by the Board after any hearings.
- ▶ N.J.A.C. 14:5A-4.1 sets forth requirements for the hiring of investment managers and trustees for the trust funds.
- ▶ N.J.A.C. 14:5A-4.2 requires the filing of annual reports regarding the decommissioning trust fund.
- ▶ N.J.A.C. 14:5A-4.3 requires the distribution of the annual reports to DEP, the Ratepayer Advocate, and the municipality in which the plant is located.

The Board is proposing to readopt the rules with two very minor clarifying

amendments. The amendments are proposed to N.J.A.C. 14:5A-4.2(a)1x and (b), which address the requirement that each electric utility file annual reports regarding their decommissioning trust funds.

N.J.A.C. 14:5A-4.2(a)1x provides that, for a nuclear generating station that is jointly owned by a New Jersey company and an out-of-State company, the annual report must indicate what portion of the decommissioning fund is contributed by each out-of-State company. N.J.A.C. 14:5A-4.2(b) provides for extra time for filing an annual report when the generating station is partially owned by an out-of-State entity. Both of these existing provisions use the term "utility" in referring to out-of-State entities with ownership interests in nuclear generating stations. However, in some cases the entity is not a utility but is some other type of corporation. Therefore, the term "utility" is proposed to be replaced in these provisions with the term "joint owner." This will clarify the provisions and make them more accurate, but will not change their effect.

### **Social Impact**

The proposed readoption with amendments of N.J.A.C. 14:5A will have a positive social impact. By continuing the Board's oversight of decommissioning funds, the rules will ensure that adequate funds are available for timely and safe decommissioning of nuclear power plants owned by public utilities when operation of these plants is discontinued. The annual reporting requirements and quadrennial update requirements will ensure that the Board has accurate and timely estimates of the cost of decommissioning each nuclear generating facility. The requirement for Board review of the hiring of trustees and investment managers will enable the Board to make sure that the trust funds are well managed and remain adequate over time. The rules also provide for public notice of filings, so that the public can provide comment on the decommissioning funds and their management.

### **Economic Impact**

The proposed readoption with amendments is expected to have no economic impact on regulated entities or the State. Those New Jersey electric utilities that have an ownership interest in nuclear generating plants incur expenses in complying with the filing requirements imposed by N.J.A.C. 14:5A. These utilities must prepare reports for use by the Board, other State agencies, and the public. However, the proposed readoption with amendments will merely continue the existing requirements. The minor amendments proposed address only the term used to describe nuclear generating stations owned in part by out-of-State entities, and will not affect the cost of compliance with the rules.

### **Federal Standards Statement**

Executive Order No. 27(1994) and P.L. 1995, c.65 (N.J.S.A. 52:14B-22 through 24) require State agencies, which adopt State rules that exceed any Federal requirements, to include in the rulemaking document a comparison with Federal law. The proposed readoption of N.J.A.C. 14:5A by the Board of Public Utilities (Board) contains some standards and requirements that exceed those of comparable Federal law. The comparable Federal law is found in the rules of the Nuclear Regulatory Commission (NRC) at 10 C.F.R. § 50.75. In general, the State rules require somewhat more frequent and detailed reporting by nuclear facility operators, and require a site-specific, as opposed to formulaic, determination of decommissioning costs.

The major difference between the State and Federal rules lies in the different approaches for determining the required amount of each decommissioning fund. The NRC rules at 10 C.F.R. § 50.75(c)(1) set forth a minimum dollar amount based on the size of the nuclear facility as measured by its thermal output in megawatts-thermal (MWt), to which is added a factor for escalation of the costs of labor, energy and waste burial. By contrast, the State rules require a site-specific decommissioning cost estimate that takes into account not only the particulars of the nuclear facility as built, but also the state of the art in decommissioning technology, and up-to-date cost estimates for disposal and all other related costs. The State rules require that the decommissioning cost estimate be accompanied by a complete description of the decommissioning plan and of the basis for the cost estimates. The Federal rule requires only the dollar amount of the cost estimate, with minimal background information on how that amount was calculated.

The cost to nuclear facility operators of performing the State-required decommissioning cost estimate will be substantially higher than the cost of demonstrating compliance under the Federal rules. This stems from the information gathering, planning and analysis, and calculations required. However, this site-specific approach is necessary to ensure that a decommissioning fund will be adequate for the specific complexities of the actual site and facility; it ensures that the fund reflects the changes over time in decommissioning technology and other variables; and it minimizes the chance of encountering unforeseen expenses at the time of decommissioning. This approach results in a much more accurate decommissioning cost estimate. An accurate cost estimate is crucial to prevent overcharging of ratepayers for a decommissioning fund that is larger than necessary, or undercharging that can result in insufficient funding (and thus in a possible rate spike) when operations cease and decommissioning begins. Thus, the costs of this site-specific approach are outweighed by the fact that without this level of accuracy, the Board could not carry out its mandate to ensure that decommissioning funds, and consequently the utility rates that support them, will be adequate but not excessive.

An additional aspect of the State rules that is somewhat more stringent than the Federal rules is the degree of oversight regarding the management of the decommissioning trust fund. The State requires a nuclear facility operator to submit an

annual report of decommissioning trust fund balances. See N.J.A.C. 14:5A-4.2. The NRC rules require only bi-annual reporting of both the trust fund balance and updated decommissioning cost estimates. The State rules also require at N.J.A.C. 14:5A-4.2(a)1vii that a nuclear facility operator submit an accounting of all fund management and trustee fees, commissions and taxes incurred in maintaining the decommissioning trust fund. Compliance with the State rules regarding trust fund management will result in very minor additional costs for nuclear facility operators, because the information they must gather and submit is already in their possession. Again, the Board's need for up-to-date, accurate information in order to carry out its mandate to protect ratepayers justifies these minor costs.

The State rules at N.J.A.C. 14:5A-4.2(a)1xi include a requirement not found in the Federal rules, that a New Jersey nuclear facility owner must report the decommissioning trust fund balances of out-of-state joint nuclear facility owners. Under the Federal rules, these balances would be separately reported by each owner. The State rule requirement for a combined figure allows the Board to obtain a comprehensive picture of the entire decommissioning fund, so as to ensure that New Jersey ratepayers do not subsidize decommissioning costs that should be carried by out of state joint owners. Determining this combined figure is likely to require a small amount of extra time spent in calculations, so that the cost of complying with the State rule in this respect may be very slightly higher than the cost of complying with the Federal rule. However, this cost will be negligible, and the required information is necessary in order to ensure that the Board has complete information.

In general, the additional stringency of the State rules is justified by the Board's statutory mandate to oversee utility rates. Unlike the NRC, the Board has an obligation to ensure that the portion of New Jersey utility rates that supports decommissioning funds is adequate but not excessive. In order to do this, the Board must have accurate and up-to-date information on the realistic decommissioning costs for each nuclear facility, as well as on the status and management of each decommissioning trust fund. The State rule's more stringent requirements are necessary in order to provide this information to the Board. In fact, the Board has used these reports in the past to identify and correct a discontinuity between the amount of money put into decommissioning funds and the amount actually necessary for decommissioning. Based on this information, the Board adjusted the rates paid by citizens to more accurately reflect decommissioning costs. Similarly, the reporting of fund balances by out-of-state joint owners of a nuclear facility can alert the Board to a case where action may be needed by the New Jersey based joint owner to compensate for a shortfall in funds from the out-of-State owner.

### **Jobs Impact**

The Board does not expect the proposed readoption with amendments to have any effect on either the creation or loss of jobs in any sector of the State's economy. The existing rules require the employment of analysts or consultants to prepare and file

reports concerning decommissioning of nuclear generating stations owned by public utilities, and concerning the management of trust funds. The proposed amendments will not affect this.

### **Agriculture Industry Impact**

The Board does not anticipate that the proposed readoption with amendments will have any impact on the agriculture industry of the State, because the rules apply only to nuclear power plants owned by New Jersey utilities.

### **Regulatory Flexibility Analysis**

The proposed readoption with amendments will not impose any recordkeeping, reporting or other compliance requirements on small businesses because it does not apply to any small businesses. A small business, as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., is a business that has fewer than 100 employees. N.J.A.C. 14:5A governs only major New Jersey electric utilities that individually employ well in excess of 100 employees.

### **Smart Growth Impact**

The Board anticipates that the proposed readoption with amendments will have no impact on either the achievement of smart growth or the implementation of the State Development and Redevelopment Plan. The State Plan is intended to "provide a coordinated, integrated and comprehensive plan for the growth, development, renewal and conservation of the State and its regions" and to "identify areas for growth, agriculture, open space conservation and other appropriate designations." N.J.S.A. 52:18A-199a. Smart growth is based on the concepts of focusing new growth into redevelopment of older urban and suburban areas, protecting existing open space, conserving natural resources, increasing transportation options and transit availability, reducing automobile traffic and dependency, stabilizing property taxes, and providing affordable housing." Since these rules apply only to nuclear generating stations owned by New Jersey utilities, and do not affect the location of future development, the proposed readoption with amendments will not impact smart growth or the State Plan.

**Full text** of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 14:5A.

**Full text** of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

## **SUBCHAPTER 4. DECOMMISSIONING TRUST FUND REVIEW**

### **14:5A-4.2 Decommissioning trust annual reports**

- (a) On or before April 15 of each year, each electric utility shall file with the Board:
1. An annual decommissioning trust fund report which shall provide for each nuclear generating station in which the electric utility has an ownership interest:
    - i.-ix. (No change.)
    - x. For jointly-owned stations in which there is shared ownership with one or more out-of-State [utilities] joint owners, the present amount of funds set aside by each out-of-State [utility] joint owner for decommissioning each station as well as the annual level of contribution toward a decommissioning fund; and
    - xi. (No change.)
  2. (No change.)
- (b) For jointly-owned stations in which there is a shared ownership with one or more out-of-State [utilities] joint owners, the information required by (a) above may be filed as late as May 15, if necessary, to allow sufficient time to obtain that information from the out-of-State joint owners.
- (c) (No change.)